

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Case No. 2:23-cv-00154-RFB-BNW

ORDER

Plaintiff,

V.

FEDERAL HOME LOAN MORTGAGE
CORPORATION *et al.*

Defendants.

Before the Court is Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”)’s Motion to Dismiss the Complaint (ECF No. 5). For the reasons stated below, the motion is granted.

I. PROCEDURAL HISTORY

On January 27, 2023, this case was removed from the Nevada Eighth Judicial Circuit Court. ECF No. 1. On February 3, 2023, Defendant Freddie Mac filed the instant Motion to Dismiss. ECF No. 5. Plaintiff Saticoy Bay LLC Series 4641 (“Saticoy”) Replied on February 17, 2023. ECF No. 9. Freddie Mac responded on February 24. ECF No. 10.

II. FACTUAL ALLEGATIONS

This matter concerns a property located at 4641 Viareggio Court, Las Vegas, NV 89147 A.P.N. 163-19-311-015 (“the Property”). On January 25, 2007, a deed of trust (“DOT”) encumbering the Property was recorded, memorializing an obligation between borrower Monique Guillory and loaner First Magnus Financial Corporation.

1 On December 23, 2010, a Notice of Breach and Default (“first NOD”) related to the DOT
 2 was recorded. On February 11, 2011, Freddie Mac’s predecessor in interest, Mortgage Electronic
 3 Registration Systems, Inc. (“MERS”) assigned the DOT to Aurora Loan Services LLC (“Aurora”),
 4 which was recorded in a Corporate Assignment Deed of Trust. The next year, on February 1, 2012,
 5 a Notice of Trustee’s Sale was recorded. On August 30, 2012, MERS and Aurora each assigned
 6 the DOT to Nationstar Mortgage LLC (“Nationstar”), which was recorded.

7 During approximately the same period, Guillory failed to make payments for assessments to
 8 the Naples Community Homeowners Association (“HOA”) and their agents recorded a Notice of
 9 Delinquent Assessment Lien on August 18, 2011. Subsequently, the HOA’s agents filed a Notice
 10 of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien.
 11 With Notice filed on July 30, 2012, a non-judicial foreclosure sale was carried out on October 18,
 12 2012, for \$3,647.16 due. Saticoy was the highest bidder at \$5,500.00.

13 In a separate lawsuit between Saticoy and Nationstar, the Nevada Eighth Judicial District
 14 Court for Clark County granted summary judgment for Nationstar on January 4, 2021, and holding
 15 that the DOT was not extinguished by the HOA foreclosure sale.

16 On July 27, 2022, more than a decade after the first NOD, Quality Loan Service Corp.
 17 (“QLS”) recorded a Notice of Rescission of Notice of Breach and Default rescinding the first
 18 NOD. On August 19, 2022, QLS recorded a Notice of Breach and Default (“second NOD”) related
 19 to the DOT. On November 21, 2022, QLS filed a Notice of Sale setting a sale for the property on
 20 December 16, 2022.

21 On November 28, 2022, Nationstar assigned the DOT to Freddie Mac, which was recorded.

22 On December 5, 2022, Saticoy filed a complaint in the Nevada Eighth Judicial Circuit Court.

23 **III. LEGAL STANDARD**

25 An initial pleading must contain “a short and plain statement of the claim showing that the
 26 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The court may dismiss a complaint for “failure
 27 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In ruling on a motion
 28 to dismiss, “[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and

1 are construed in the light most favorable to the non-moving party.” Faulkner v. ADT Sec. Services, Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

3 To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,”
 4 but it must do more than assert “labels and conclusions” or “a formulaic recitation of the elements
 5 of a cause of action” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains
 7 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
 8 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
 9 alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on
 10 the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive
 11 dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences
 12 from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

IV. DISCUSSION

16 Plaintiff Saticoy brings claims against Freddie Mac for (1) quiet title, slander of title, and
 17 fraud and (2) declaratory relief regarding excess proceeds from the HOA sale. The Court addresses
 18 the claims in turn.

A. Nevada’s Ancient Lien Statute

20 Each of Plaintiff Saticoy’s claims for quiet title, slander of title, and fraud each require
 21 proving that Freddie Mac lacked valid title to bring the foreclosure sale. Compl., ECF No. 1-1, at
 22 ¶¶ 53-54, 62, 68-69, 71, 76-78; see also Chapman v. Deutsche Bank Nat'l Trust Co., 129 Nev. 314,
 23 318-19 (2013) (requiring each party to plead ownership in a quiet title claim); Executive Management Ltd. v. Ticor Title Ins. Co., 114 Nev. 823, 842 (1998) (requiring a false
 24 communication for a foreclosure sale in a slander of title claim); A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc., 120 Nev. 277 (2004) (requiring a false representation for claims of fraud).

27 In full, Nevada Revised Statute 106.240, the “ancient lien” statute, provides:

28 The lien heretofore or hereafter created of any mortgage or deed of trust upon any

1 real property, appearing of record, and not otherwise satisfied and discharged of
 2 record, shall at the expiration of 10 years after the debt secured by the mortgage or
 3 deed of trust according to the terms thereof or any recorded written extension
 4 thereof become wholly due, terminate, and it shall be conclusively presumed that
 5 the debt has been regularly satisfied and the lien discharged.

6 NRS § 106.240. Simply put, the statute “provides a means by which liens on real property are
 7 automatically cleared from the public records after a certain period of time.” SFR Invs. Pool 1,
LLC v. U.S. Bank N.A., 507 P.3d 194, 195 (Nev. 2022). That period is ten years from when the
 8 unpaid debt secured by the lien has become “wholly due.” Id.; see also Pro-Max Corp. v. Feenstra,
 9 117 Nev. 90, 94 (2001) (holding notes and deeds of trust discharged because no recorded extension
 10 was made, and ten years had passed since the notes became due).

11 Saticoy argues that the first NOD accelerated the loan, making it “wholly due” for purposes
 12 of the Nevada ancient liens statute. Saticoy further argues that more than ten years from the
 13 acceleration date passed without the loan being decelerated and, thus, the ancient liens statute
 14 extinguished Freddie Mac’s DOT. Defendant Freddie Mac argues that neither the acceleration nor
 15 any other event triggered the ancient lien statute.

16 The Nevada Supreme Court recently settled the matter of “whether a loan secured by real
 17 property becomes ‘wholly due’ for purposes of [the ancient lien statute] when a Notice of Default
 18 is recorded as to the secured loan.” LV Debt Collect, LLC v. Bank of N.Y. Mellon (“LVDC”), 534
 19 P.3d 693, 2023 Nev. LEXIS 23, at *1 (Nev. August 24, 2023). It does not. Id.

20 In its published decision in LVDC, a nonparty purchased property with a bank loan and
 21 executed a promissory note and a deed of trust. Id. at *2. That deed of trust contained a provision
 22 that, in the event of default, the borrower had at least 30 days to cure the default and, failing that,
 23 the lender had the beneficiary had the option to accelerate the note. Id. at *2. Following default,
 24 the note was accelerated. Id. at *2-3. At the same time, following a default on the homeowner’s
 25 association dues, the property was sold at a non-judicial foreclosure. Id. at *3. The bank did
 26 foreclosure until after ten years from the acceleration of the note. Id. at *4.

27 Rejecting the argument that the note’s acceleration triggered the ancient liens statute, the
 28 Nevada Supreme Court reasoned that “In particular . . . NRS 106.240 plainly states that a debt

1 ‘become[s] wholly due’ only ‘according to’ either of two things: (1) the ‘terms thereof,’ referring
 2 to the mortgage or deed of trust, or (2) ‘any recorded written extension thereof.’” Id. at *8. “Thus,
 3 when there is no recorded extension of the due date, the terms of the mortgage or deed of trust
 4 dictate when the debt becomes wholly due.” Id. The Supreme Court found that, even though the
 5 note had an acceleration option, this did not mean that the DOT became “wholly due,” since the
 6 borrower had time to cure. Id.

7 First, the Court rejects Saticoy’s argument that acceleration of the loan resulted in it
 8 becoming “wholly due.” The holding in LVDC expressly rejects that approach and is controlling
 9 here. 2023 Nev. LEXIS 23. Second, turning to the two forms of relevant documents, Plaintiff has
 10 identified no provision, beyond the acceleration provision, that would result in the DOT becoming
 11 “wholly due” under its terms. Having reviewed each of the relevant documents furnished by
 12 Saticoy in the Compliant, the Court finds that there is no term that would result in the DOT coming
 13 “wholly due” under the holding in LVDC. Taken together, the Court finds that, “[a]ll well-pleaded
 14 allegations of material fact in the complaint are accepted as true and are construed in the light most
 15 favorable to the non-moving party,” Saticoy has failed to plead sufficient facts to establish a claim
 16 for quiet title, slander of title, and fraud. See Faulkner, 706 F.3d at 1019.

17 B. Excess Proceeds

18 Plaintiff Saticoy’s final claim seeks declaratory relief against Freddie Mac and its Co-
 19 Defendants Leach Johnson Song & Cruchow and Minique Guillory. Saticoy seeks for the Court to
 20 determine the amount and manner of distribution of the “excess proceeds” arising from the HOA
 21 foreclosure sale.

22 There is no dispute that the HOA agent has not distributed the excess proceeds. There is
 23 no dispute that Freddie Mac holds the excess proceeds. As such, the Court finds that Saticoy lacks
 24 standing to bring this claim against Freddie Mac. Lujan v. Defenders of Wildlife, 504 U.S. 555,
 25 560 (1992) (“[T]he core component of standing is an essential and unchanging part of the case-or-
 26 controversy requirement of Article III.”); see also Knittle v. Progressive Cas. Ins. Co., 112 Nev.
 27 8, 10 (1996) (holding declaratory relief under Nevada Law requires a justiciable controversy, a
 28 legally protectable interest, and an issue ripe for determination.).

1 In order to demonstrate Article III standing, a plaintiff must show: (1) a concrete injury;
 2 (2) fairly traceable to the challenged action of the defendant; (3) that is likely to be redressed by a
 3 favorable decision. Lujan, 504 U.S. at 560-61. An injury is “fairly traceable” where there is a
 4 causal connection between the injury and the defendant’s challenged conduct. Id. at 560. Even if
 5 Saticoy can establish a likelihood of future injury, the party causing that injury is the HOA agent
 6 who has the funds and obligation to disburse them not Freddie Mac. Here, there is no allegation
 7 that Freddie Mac took any action that has resulted in or will result in the non-disbursement or
 8 incorrect disbursement of funds. Therefore, the Court finds that Plaintiff lacks standing to bring a
 9 claim for declaratory relief against Freddie Mac at this time.

10 **C. Remand to State Court**

11 Federal courts are courts of limited jurisdiction. In re Hunter, 66 F.3d 1002, 1005 (9th Cir.
 12 1995). A federal court therefore has a *sua sponte* obligation to ensure that it has subject matter
 13 jurisdiction. Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1036 (9th Cir. 2013) (citations omitted);
 14 see also Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) (“When a requirement goes to subject-
 15 matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have
 16 disclaimed or have not presented.’). Indeed, “subject matter jurisdiction can never be waived or
 17 forfeited” Gonzalez, 565 U.S. at 134.

18 The basis of removal of this action to state court was 12 U.S.C. § 1452(f), which permits
 19 Freddie Mac, as a federally chartered corporation, to remove actions to a federal district court and
 20 that “all civil actions to which the Corporation is a party shall be deemed to arise under the laws
 21 of the United States.” With the dismissal of Freddie Mac from this suit, § 1452(f) no longer
 22 provides subject matter jurisdiction. Since the Court lacks jurisdiction granted by a federal law,
 23 there is no federal question jurisdiction. See also 28 U.S.C. § 1331.

24 In addition, there is no dispute the amount in controversy remaining under the declaratory
 25 relief claim is substantially below the federal matter in controversy requirement for diversity
 26 jurisdiction and, further, all remaining parties are citizens of Nevada. Therefore, there is no basis
 27 for diversity jurisdiction in this action. See 28. U.S.C. § 1332(a).

28 With no basis remaining for the exercise of jurisdiction, the Court remands the action back

1 to the Eighth Judicial District Court. See 1447(c) (“If at any time before final judgment it appears
2 that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

3

4 **V. CONCLUSION**

5 **IT IS THEREFORE ORDERED** that Defendant Federal Home Loan Mortgage
6 Corporation’s Motion to Dismiss (ECF No. 5) is **GRANTED** as to Plaintiff’s claims for quiet
7 title, slander of title, and fraud and is **GRANTED** as to Plaintiff’s claim for excess proceeds.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall **REMAND** this matter to the
9 Eighth Judicial District Court in Clark County, Nevada for lack of subject matter jurisdiction.

10 **IT IS FURTHER ORDERED** that the Clerk of Court shall close this case accordingly.

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12 DATED: September 30, 2023.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE